



## HISTORICAL OVERVIEW

For close to a century, the Arizona State Land Department has managed State Trust Lands. These lands were granted by the Federal Government to Arizona at the time of its establishment as a territory in 1863; additional lands were conveyed upon statehood under the Enabling Act of 1910. Arizona created the Land Department as a condition of statehood, and accepted the responsibility of State Trust Land management. Today, the Trust controls approximately 9.3 million acres, representing 13% of all land in Arizona, and all revenue production for the 13 Trust beneficiaries.

It is the Land Department's responsibility, on behalf of the beneficiaries, to assure the highest and best use of State Trust Lands. The Federal Enabling Act and State Constitution mandate that fair market value must be obtained from all State Trust Land transactions. Reflected in the unique properties offered for sale or lease throughout the State, the Trust's diversity of lands has always been its most valuable resource.

## RIGHT OF WAY

A right of way is an encumbrance on the property it crosses. Depending upon the alignment, it can benefit or cause damage to that property's effectiveness and value. Rights of way are granted across State Trust Land for a variety of public and private uses, such as access roads, infrastructure, power lines, communication lines, and public roadways. Rights of ways are issued for terms ranging from one year to perpetuity. The term of a right of way is determined by analyzing the proposed use, local jurisdictional permitted approvals, and its compatibility with the existing and/or anticipated use of adjacent State Trust Land. The Land Department will review the application to evaluate the necessity for the right of way and the suitability of the proposed use and alignment. If the alignment and purpose of the right of way is acceptable, the application is considered and processed. The Land Department will complete a field inspection of the proposed alignment. Conditions for a right of way are established by addressing issues such as relocations, engineering considerations, drainage, construction criteria, archaeological and native plant clearances. The cost to comply with such conditions will be paid by the applicant. All rights of way in excess of 10 years must be approved by the Board of Appeals, an independent body of 5 members, appointed by the Governor.

# ARIZONA STATE LAND DEPARTMENT

# Right of Way

## EVALUATION CRITERIA

All State Trust Land transactions must be in accordance with the State's mandate to assure the highest and best use of the land, and to act in the best interest of the Trust. The right of way process is initiated by an application, completed by the applicant in consultation with Department staff, and filed with the Land Department. Submission of an application does not guarantee that a right of way will be issued. The Trust cannot subsidize development for any purpose, no matter how commendable, at the expense of its beneficiaries. When reviewing a right of way application, the Land Department will take into consideration: the viability of the proposed use; extent of improvements necessary to the use; compatibility with surrounding uses; local land use; planning and zoning; access; hydrology; geology; archaeology and environmental implications.

## RIGHT OF WAY PROCEDURES AND FEES

An Application Supplement must accompany any new application for the proposed use and may be downloaded from our website [www.land.state.az.us](http://www.land.state.az.us), under the side bar link titled "Applications". If the Application Supplement does not accompany the application, the processing of the application will be delayed. Generally speaking, the application will require the following:

**1. Legal Description:** A new application must contain the township, range, section, description, acreage and county where the land is located. Certified legal surveys or centerline legal descriptions may be required as part of the application process.

**2. Proposed use, Project Plans and Specifications:** Depending on the complexity of the proposed use of the right of way, the applicant may be required to furnish plans, specifications or cross sections for roads, drainage reports and/or detailed engineering documentation to support the proposed project, and may be asked to provide other detailed information regarding the use and its location.

**3. Appraised Rent:** All State Trust Land transactions must be in accordance with the State's responsibility to receive an appropriate return to the Trust beneficiaries. Rights of way are valued based on the highest and best use method, using the parcel of the whole. The final cost of the right of way is determined by using a percentage of the land value based on the use, then by applying a term factor.

**4. Payment Terms:** The cost to obtain a right of way is a mix of land value, the purpose of the right of way and

impact of the proposed use on adjacent State Trust Land. Full payment must be made for the entire term of the easement prior to issuance. If a public auction is required, payment for the minimum bid price must be paid at the time of the auction. Additional amounts, if any, above the minimum bid price will be due as stated in the auction notice.

**5. The Auction Process:** A right of way issued for a term exceeding 50 years, typically must be sold at a public auction. After approval by the Board of Appeals and the Commissioner, the legal advertising notice is advertised in two publications consecutively for a 10-week period prior to the public auction, as required by the Enabling Act. An estimated advertising expense fee is required from the applicant, and must be received prior to the Land Department scheduling the public auction.

**6. Additional Expenses:** Depending on the location of the land applied for, the proposed use, and type of right of way, there may be additional costs incurred, and are the responsibility of the applicant. These may include, but are not limited to: Certified Legal Surveys and/or Legal Description Preparation; ALTA Land Survey; Archaeological Survey; Geotechnical Report; Infrastructure Analysis Report; Drainage Analysis; Phase I Environmental Assessment Report and Appraisal Report.

**7. Reimbursable Improvements (Relocation):** If the proposed right of way affects improvements currently on State Trust Land, and if such improvements are deemed by the Land Department to be reimbursable, the improvements must be either relocated or their fair market value reimbursed by the applicant. Value is determined by an appraisal. If the successful bidder is the owner of improvements, no payment is required.

**8. Processing Time:** The complexity and terms of the right of way are determining factors in the length of time it takes to process an application. Processing times vary from 12-14 months for completion of a right of way application. It is strongly recommended to contact the Right of Way Section for a pre-conference, or to discuss the proposed use prior to filing a right of way application. An appointment may be made by contacting the Land Department's Real Estate Division at (602) 542-4098.

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To schedule and application pre-conference, or to discuss a property and your interests with an administrator, contact the Land Department's Right of Way Section at (602) 542-4098.

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1 6 1 6 West Adams • Phoenix, Arizona 85007

602-542-3000

fax: 602-542-4668

[www.land.state.az.us](http://www.land.state.az.us)

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